IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10358 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

MAHENDRA SITARAM BUNDEL - Petitioner
Versus
UNION OF INDIA AND OTHERS - Respondents

==========

Appearance :
MR ANAND L SHARMA for the Petitioner.
MR SN SINHA for the Respondents.

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 19/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Petitioner - Mahendra Sitaram Bundel has filed this petition and prayed that the impugned judgment and order dated 12-07-2004 (Annexure-E) passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short, *"Tribunal"*) in O. A. No. 532 of 2003 filed by the petitioner-applicant be quashed and set aside by allowing O. A. No 532 of 2003 filed by him before the learned Tribunal.

2. Shri Sitaram Bundel, who was working as Senior Khalasi at Sabarmati, adopted Mahendra (the present petitioner), son of his younger brother, Bhimsingh, on 06-10-1998 by a valid Adoption-Deed (Annexure-A) on the death of his wife, who died leaving behind her only one daughter, Nita Kumari. Unfortunately, the said Adoption-Deed could not be registered. Sitaram made a declaration on 13-09-2000 regarding the adoption of the petitioner as his son and requested the respondent-authority to enter his name in the Service Record for all benefits as admissible to the family member of a railway employee. Along with it, the Adoption-Deed was also

sent. The said deed was forwarded by the authority to respondent No. 1 for giving all benefits to him as dependent of Sitaram. Thereafter, Sitaram died while on duty on 08-01-2002.

On his death, the petitioner submitted an application in the prescribed form to the respondent-authority to give him appointment on compassionate ground. However, the respondent-authority, by its letter dated 17-04-2003, informed the petitioner that the competent authority had considered his application for appointment on compassionate ground sympathetically; however, in view of Railway Board Circular, the Adoption-Deed was not registered prior to the death of his father and that the ex-employee had two children living at the time of execution of the Adoption-Deed; and, therefore, he cannot be given appointment on compassionate ground.

On receiving this intimation, the petitioner immediately sent registered notice dated 26-07-2003 through his Advocate, stating that the Adoption-Deed was duly executed on 06-10-1998 and duly registered

by Notary Public (Government of India) Shri R. M. Thakor; the said deed was sent for publication in Gazette of Government of Gujarat by his father on 03-09-2002; the same was also notified in the Gujarat Government Gazette Part-II dated 04-01-2001; and, therefore, he may be provided appointment on compassionate ground. However, there was no response to it. Therefore, at last, the petitioner approached the learned Tribunal by way of O. A. No. 532 of 2003.

As stated earlier, the said application was rejected by the learned Tribunal mainly on the ground that there was no collateral evidence except unregistered deed of adoption produced by the applicant; therefore, in absence of any other material, the claim of the applicant for appointment on compassionate ground on the sole basis of unregistered Adoption-Deed cannot be accepted. This is challenged in this petition.

3. Heard learned Counsel Shri Anand Sharma for the petitioner and Shri S. N. Sinha for the respondents.

4. From the judgment and order, it is clear that the learned Tribunal has not doubted the Adoption-Deed executed way back on 06-10-1998. However, it has refused to place sole reliance on it in absence of collateral evidence produced by the applicant. Unfortunately, the learned Tribunal has completely lost sight of the fact that the unregistered Adoption-Deed was sent for publication in the Official Gazette of Government of Gujarat by late Shri Sitaram, father of the petitioner, way back on 03-09-2000 and the same was notified in the Gujarat Government Gazette Part II dated 04-01-2001. This was clearly stated in notice dated 26-07-2003 which was annexed as Annexure-A-8 to the application before the learned Tribunal. Thus, if at all any collateral evidence was required, it was very much there, but, unfortunately, the learned Tribunal lost sight of it.

The grounds for rejection of the application made by the petitioner for seeking appointment on compassionate ground by the respondent-authority

were: (i) That, as per the Railway Board Circular, the Adoption-Deed should be registered prior to the death of the employee; and (ii) That, the ex-employee had two living children at the time of adoption. The Railway Board Circular is annexed as Annexure R-1 to the reply-affidavit. It nowhere states that the Adoption-Deed must be registered one. In the Adoption-Deed itself, it is clearly stated that, as the wife of Sitaram died leaving behind her only one daughter, the present petitioner was adopted. Thus, there was a factual error committed by the authority while rejecting the application of the petitioner seeking appointment on compassionate ground. If the learned Tribunal had considered this aspect of the case, then it would not have rejected the application.

5. At the time of hearing of this petition, Shri Sharma has also produced photostat copy of the Gujarat Government Gazette dated 04-01-2001 which shows that the name of the petitioner was shown as the son of deceased Sitaram Bundel. He has also produced the photostat copy of the certificate issued

by the Gujarat State Co-operative Consumer Federation Limited for the Academic Year 1999-2000 which also shows that the petitioner was the son of Shri Sitaram. Mark-sheet is also produced. Under the circumstances, the learned Counsel for the respondents was hardly in a position to support the impugned judgment and order passed by the learned Tribunal. He only submitted that let the matter be remitted to the learned Tribunal for its reconsideration with certain observations. However, the learned Counsel Shri Sharma for the petitioner submitted that to send the matter back to the learned Tribunal would be an exercise in futility as the learned Tribunal will ultimately remit the matter to the authority for its reconsideration.

6. We find considerable force in the submission of Shri Sharma that the matter be remitted to the authority for its reconsideration.

7. Under the circumstances, the impugned judgment and order dated 12-07-2004 passed by the learned Tribunal, dismissing O. A. No. 532 of 2003,

is hereby quashed and set aside, and while allowing O. A. No. 532 of 2003 filed before the learned Tribunal, we direct the respondent-authority to reconsider its impugned decision dated 17-04-2003, by quashing and setting aside the same. While reconsidering the case of the applicant for appointment on compassionate ground, the authority shall take into consideration the Gujarat Government Gazette which shows that the name of the petitioner was already published as the son of the deceased Sitaram Bundel. If the authority so desires, then it may call upon the petitioner to adduce any other evidence in support of his case. The respondent-authority shall undertake that exercise and take a final decision in the matter as early as possible and not later than 31-03-2007.

8. With these observations and directions, this petition stands allowed with no order as to costs. Rule made absolute to the aforesaid extent accordingly.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath